

Serial No. 09/973,757

Attorney Docket No. VX012372

**REMARKS**

The applicants appreciate receiving the acknowledgement of the claim for priority under section 119 and notice that the certified copy of the priority document has been received.

Also, the applicants acknowledge receipt of the initialed form PTO-1449 that was filed on December 16, 2004.

Claims 1 – 32 are pending. The applicants respectfully request reconsideration and allowance of this application in view of the above amendments and the following remarks.

The abstract was objected to for reasons including that it is greater than 150 words and includes legal phraseology. However, the amended abstract per the Preliminary Amendment filed on 11 October 2001 has precisely 129 words and does not include legal phraseology. Therefore, it is believed that the examiner was not reviewing the amended abstract. Reconsideration and withdrawal of the objection is respectfully requested in view of the Preliminary Amendment filed on 11 October 2001.

Claims 1 – 32 were rejected under 35 USC 112, second paragraph, as being indefinite and failing to conform to U.S. practice. The claims have been carefully reviewed and revised, and the examiner is respectfully requested to withdraw the rejection in view of the claim amendments.

Claims 1 – 16 and 19 – 32 were rejected under 35 USC 102(e) as being anticipated by U.S. Patent No. 6,952,680, Melby et al. ("Melby"). Claims 17 – 18 were rejected under 35 USC 103(a) as being unpatentable over Melby. Insofar as the rejection can be applied to the claims as amended, the rejection is respectfully traversed for reasons including the following, which are provided by way of example.

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Independent claim 1 recites, in combination, for example, a work machine management system having a plurality of work machines, the work machines being connected to each other by a first communication means, and at least one main work machine of the plurality of work machines is connected to a server apparatus by a second communication means configured to facilitate reciprocal communications.

In operation, the plurality of work machines includes the main work machine and follower work machines. The main work machine collects the data associated with the follower work machines and transmits the data to a server apparatus that is located remotely from the work machines. The server apparatus prepares management information based on the data transmitted from the main work machine, and transmits the management information to the main work machine. The main work machine manages the plurality of work machines based on the management information. Consequently, the work machines can be managed by the operator of the main work machine.

On the other hand, a conventional work machine management system requires, in addition to the operators of the work machines, at least one managing person at the management station who collects the information on the work machines and provides the instructions to the work machines. Accordingly, embodiments in accordance with claim 1, for example, can reduce personnel cost.

Without conceding that Melby discloses any feature of the present invention, Melby discloses a configuration in which movable assets such as work machines 31 transmit work machine data to a local controller 36 which is unmovably located in their neighborhood. The local controller 36, then transmits working machine data to an analysis system 50 having a server and administrating controller 55 via the Internet, while performing reciprocal communications

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with the analysis system 50 and the administrating controllers 55. It may be so configured that the plurality of work machines 31 are unmovably located whereas the local controller 36 is movable.

Also, in Melby, it is the local controller 36 that communicates with the analysis system 50, and the administrating controllers 55 are remotely located. Further, the work machines do not perform communications with each other. In contrast, in the recited invention, the work machines communicate with each other through a first communication means.

In Melby, maintenance can be performed with a minimum number of persons being involved. Further, by storing work machine information up to that time in a remote database, a preferred number of maintenance parts can be prepared beforehand, thereby reducing the down time due to maintenance.

The office action asserts that Melby discloses the invention as claimed. To the contrary, Melby fails to teach or suggest the invention, as presently claimed, when the claims are considered as a whole. Melby fails to teach or suggest, for example, that the work machine information is transmitted to the at least one main work machine through the first communication means, in combination with the server apparatus connected to the main work machine. In addition, Melby fails to teach or suggest, for example, that the server apparatus transmits the management information to the at least one main work machine through the second communication means, and the at least one main work machine transmits the work instructions to the other work machines through the first communication means, based on the transmitted management information. As a result, in Melby, work instructions cannot be transmitted to other work machines through a communication means from the operator of the main work machine.

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Melby fails to teach or suggest, for example, these elements recited in independent claims 1, 6, 14, 16, 22, 30, 31 and 32. It is respectfully submitted therefore that claims 1, 6, 14, 16, 22, 30, 31 and 32 are patentable over Melby.

For at least these reasons, the combination of features recited in independent claims 1, 6, 14, 16, 22, 30, 31 and 32, when interpreted as a whole, is submitted to patentably distinguish over the prior art. In addition, Melby clearly fails to show other recited elements as well.

With respect to the rejected dependent claims, applicant respectfully submits that these claims are allowable not only by virtue of their dependency from the independent claims 1, but also because of additional features they recite in combination.

Furthermore, the office action makes several inherency arguments which are respectfully traversed in the instances listed below. That something may occur or be present in the prior art, which applicants vigorously deny in these instances, is insufficient to establish inherency. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.'" *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted). In order to support a contention of inherency, the allegedly inherent characteristic must necessarily flow from the teachings of the reference. *In re Levy*, 17 USPQ2d 1461, 1464 (Bd Pat. App. & Inter. 1990). Accordingly, with respect to claim 2, 7 and 8, the examiner is respectfully requested to provide a citation to a reference or an Examiner's affidavit, or to withdraw the rejection, in the instances listed below. 37 CFR 1.104(d)(2); MPEP 2144.03.

With respect to claim 2, the examiner argues that it is inherent that management information transmitted from said server apparatus to said main work machine is displayed on a

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display device provided in said main work machine. To the contrary, it is not necessary that management information transmitted from said server apparatus to said main work machine is displayed on a display device provided in said main work machine.

With respect to claim 7, the examiner argues that a scheduled work plan is inherently transmitted from said server apparatus to said main work machine and displayed on a display device in said main work machine. To the contrary, it is not necessary that a scheduled work plan is transmitted from said server apparatus to said main work machine and displayed on a display device in said main work machine.

With respect to claim 8, the examiner argues that it is inherent that work orders require more than a single task, and that the main work machine is determined for each of those work processes. To the contrary, it is not necessary that work orders require more than a single task, and that the main work machine is determined for each of those work processes.

Moreover, with respect to claim 17, the examiner appears to be relying on personal knowledge to support the finding of what is known in the art. The taking of Official Notice is respectfully traversed, and the examiner is requested to provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. MPEP 2144.03 See 37 CFR 1.104(d)(2). An examiner cannot simply reach conclusions based on their own understanding, or experience, or assessment of what would be basic knowledge or common sense. Rather, there must be some concrete evidence in the record in support of these findings."). *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Moreover, the examiner's expertise "may provide sufficient support for conclusions [only] as to peripheral issues." *Id.* at 1385-86, 59 USPQ2d at 1697.

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In this instance, it appears that the examiner is utilizing the noticed fact to provide a motivation to modify Melby, hence, the noticed fact is clearly not a peripheral issue. Accordingly, it is inappropriate for the examiner to rely on official notice, and the examiner is requested to provide the above-mentioned affidavit or declaration.

Applicants respectfully submit that, as described above, the cited prior art does not show or suggest the combination of features recited in the claims. Applicants do not concede that the cited prior art shown any of the elements recited in the claims. However, applicants have provided specific examples of elements in the claims that are clearly not present in the cited prior art.

Applicants strongly emphasize that one reviewing the prosecution history should not interpret any of the examples applicant has described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, for the sake of simplicity, applicants have provided examples of why the claims described above are distinguishable over the cited prior art.

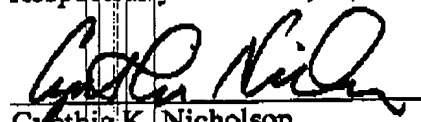
In view of the foregoing, the applicants submit that this application is in condition for allowance. A timely notice to that effect is respectfully requested. If questions relating to patentability remain, the examiner is invited to contact the undersigned by telephone.

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If there are any problems with the payment of fees, please charge any underpayments and credit any overpayments to Deposit Account No. 50-1147.

Respectfully submitted,



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